86-992

Supreme Court, U.S.
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In the Supreme Court
of the United States
October Term, 1985
No.

John E. Reardon
8 Winding Way
Gibbsboro, N.J. 08026
(609) 783-6426

Petitioner,

vs.

Virginia Reardon; Vincent Segal, Esq.; Firm of Segal & Tropp; Richard Klein, Esq.; Firm of Melnick, Morgan, Klein & Cetti; Dr. Hopkins; Maffucci Realty; Ed Kelleher; Judge Page; Judge Mennetti; Judge DiMartino; Judge Wallace; N. J. Att. Gen. Mr. Kimmelman; Camden County Court System and the State of N.J.

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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Affiliation with Nat
Denman's Justice PRO-SE.
Membership date of 1/86.

3 TPP

QUESTIONS PRESENTED FOR REVIEW

1) Is a **R12-(B) (6)** dismissal proper when: The Courts have applied the standard for a lawyer to a PRO-SE, relied on material outside the pleadings, failed to provide any discovery in a complex case, there was indication by the District Court it lacked personal or subject matter jurisdiction and there were triable issues involved?

2) Does a State Court judge lose immunity when: There was Case Law and Statute which prohibited a judge from considering a particular order that was before him, there was Case Law which required the judge to recuse himself from the case which he was aware of and refused to abide by, the state judge admitted not having jurisdiction over certain matters and then heard them anyway, and there was a constitutional argument presented which would have removed personal jurisdiction from the judge?

3) Is the assignment of a malicious judge, by the assignment judge of a County Court, and refussal to remove said judge when it was his duty as per the rules of Court and State Constitution a judicial function which grants immunity or an administrative function which would make him liable?

4) Does a judge lend his authority when: He aids in the "rigging" of a trial or admits he can not hear matters unless they are properly before him and then hears them anyway and always grants the defendants requests?

5) Does a private litigant act under color of law when: There is statute which creates a nexus between the state and private party who seeks relief thereunder or when a private party acts in concert with another private party who is?

6) Does a Court Order have the same effect on a court appointed official as case law and/or statute has on a judge as to the right or loss of immunity?

7) Does the consolidation of three separate complex litigation cases with different issues, simply to allow a court to dismiss all cases at once, create the type of prejudice that would require a reversal of the cases?

8) Can **R12-(B) (6)** be used as means of settling a dispute?

9) Is the dismissal of any case, for any reason, valid when the District Court judge has demonstrated the type of behavior that violates **28 U.S.C. 455** and thus affects due process?

Note: While the above set of questions appear to be different than the originals, they are not. They have been re-arranged and consolidated. This then also affects the apperance of the arguments because they have been re-arranged to fall under the new question headings.

Also, the Petitioner does not have the time or money right now to reproduce all of the Appendices and has therefore only duplicated the Appeals Court Order to now be Appendix A.

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Opinion Below

The Court of Appeals entered a judgement order affirming the District Court decision dismissing the above captioned matter under **R12-(B) (6).** (A copy is enclosed as Appendix A.)

Jurisdiction

On February 19, 1986 the Third Circuit entered its final judgement order in the above captioned matter. (Appendix A) Therefore, the jurisdiction of this Court comes by way of **28 U.S.C. 1254.**

Constitutional Provision Involved . . .

United States Constitution, Amendment XIV:

No state shall deprive any individual of any life, liberty or property without "Due Process" nor shall it deprive any individual of the equal protection of its laws . . .

Statement of the Case

On February 19, 1986 the Third Circuit Court of Appeals affirmed the District Court dismissal of the above captioned case as per R12-(B) (6) and thus held the Petitioners appeal to be totally meritless and frivolous by its judgement order. The complaints stemmed from three separate law suits under **The 14th Amendment of the U.S. Constitution, 42 U.S.C. 1983, 42 U.S.C. 1985, 28 U.S.C. 1331 and 28 U.S.C. 1343.** The

complaints alleged concerted actions to violate constitutional rights in violation of due process and to deprive the Petitioner of the equal protection of the state laws of New Jersey regarding the custody of children.

Despite extensive briefs supported by the Supreme Court decisions, Appeals Court decisions denied by the Supreme Court of the U.S., The Third Circuits decisions in other cases, other Appeals Court decisions, State Appelate and Supreme Court decisions regarding certain criteria and standards to determine discriminatory intent and state decisions denied by the U.S. Supreme regarding conspiracy and proof and reasonable assumptions thereof, the Appelate Court and District Court has virtually allowed every legal standard under the laws to be violated and stand. This includes this Courts decision regarding the loss of immunity of judges in certain cases which is and what has been argued to be present here.

Petition for Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit

The Petitioner, John E. Reardon, respectfully prays that a Writ of Certiorari issue to review the judgement of the United States Court of Appeals for the Third Circuit entered on February 19, 1986.

Statement of the Facts Leading to the Appeals

1) In July 1984 the 84-3444 Case was filed in Philadelphia.
2) Around October 1984 the complaint was transfered to Camden and docketed as Case 84-3696.
3) The complaint requested injunctive relief which said request was never addressed or heard by the Court.
4) In November 1984 the pre-trial conference proceeded – without Petitioners prior knowledge – toward a dismissal of the Case.
5) The Petitioner moved to remove his attorney and seek leave to familiarize himself with the Case, the laws, etc.
6) The judge ruled on January 22, 1984 and denied the Petitioners request in #5.

7) As per the Case of **"Complex Litigation", 90 F.R.D. 207,** the Court, the Magistrate and the Clerks Office failed to re-schedule another conference to determine how discovery would proceed now that the Petitioner had come into the Case and was PRO-SE.

8) In December 1984, after confrontations with the State Courts regarding their jurisdiction to sit and hear matters under the circumstances and for other reasons, the Petitioner then filed the 84-5203 Case which was separate since the original complaint involved a final order by the state which was forclosed on appeal to the state by denial. **(See Tex. vs. Penzoil, 784F.2D1133, 1147)**

9) When the defendants and the State Court Judges still refused to stop their actions and continued to proceed with the full knowledge of the consequences of their improper and illegal activity, the Petitioner filed the 85-0097 Complaint. **(See Smith vs. Wade, 51 Lw 4407, 408-4412)**

10) The defendant Reardon never filed or had a legally valid answer on file until February 8, 1985, one week after the judge had closed the record to the Petitioner.

11) Only one defendant in the 84-5203 Case had filed an answer by February 1, 1985 with the state seeking leave to file and vacate default on February 1, 1985 which was granted by the judge.

12) All other defendants had either failed to answer the complaint or failed to appear to defend themselves. **(See 716 F.2D 1109, 1112, Cert. Den. 53 Lw 3240, and Re: Grossmeyer, 20 S.Ct. 535.)**

13) There were no answers on file for the 85-0097 complaint by any defendant on February 1, 1985.

14) There was a valid and legal default entered against all but one private defendant in the 84-5203 complaint with the one answering defendant demanding trial by jury.

15) The judge on February 1, 1985 made a suasponte motion to consolidate and dismiss **under R12-(B) (6)** without advanced notice or any notice to the private defendants and at a time when the PRO-SE Petitioner was not adequately prepared to defend such a motion.

16) The motion to consolidate is prejudicial since it was done only for the reason to allow the judge to address the separate

actions as one and then dismiss the complaints to protect the defendants, and thus he acted as a proponent. (If Certiorari is granted the court record will prove this.)

17) That there were numerous motions and papers submitted on February 1, 1985 and relied on by the Petitioner and the judge which made the **R12-(B) (6)** dismissal automatically summary judgement with no advanced notice. **(See Bryson vs. Brand, 621F.2D 556 which was cited by the District Court Judge.)**

18) The Petitioner argued the case laws regarding the loss of a judges immunity by way of **Stump @ 1105 and 1106 before the District Court and the loss for administrative functions as per Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3856, Cert. Den. 53 Lw 3237.**

19) Petitioner also argued before the Court of Appeals State Case Law which supports discrimination by the actions of the defendant Page and the Equal Protection Argument regarding the setting of custody under the "Best Interest" standard as per **Palmore vs. Sidotti, 52 Lw 3558.**

20) The Lower Courts have let the issue of lending authority to private litigants by enforcing officials go un-addressed.

21) The Courts have dismissed three complex litigation cases without any discovery.

22) The Courts, in light of the standard for PRO-SE's, could not possibly meet the criteria that it must be absolutely certain that no set of facts or theory could be presented by the PRO-SE Plaintiff to grant the relief requested especially when there is material in control of the defendants. **(I.E. an undisclosed savings account which could have lead to the reasonable inference that bribes were made.)**

23) The District Court Judge has demonstrated the type of prejudice and actions which would hold him accountable for recusal under **28 U.S.C. 455** and which thus deprived the Petitioner of a fair and impartial tribunal and hearing.

24) The Courts have refused to allow technical defects it feels exists to be corrected by the Petitioner. **(See Stern vs. U.S. Gypsum, 547F.2D 1329, 1334, Cert. Den. 985. Ct. 533)**

25) The District Court has used **R12-(B) (6)** as a means to force the PRO-SE Petitioner to prove his case in order to maintain the action which is in violation of the standard that a PRO-SE's

statements must be taken as true and, in light of the fact that all of the necessary allegations having been made in the complaint, is prejudicial.

26) The Lower Courts have allowed the defendant Attorney General, who failed to adequately and properly carry out his duties to ensure the laws in the state were enforced to be removed as a defendant for liability in contradiction to **Smith vs. Wade, 51 Lw 4407, 4408-4412.**

27) The judge never granted the Petitioner a Pleanary and Evidentiary Hearing as required by **R12-(D)** and as spelled out by the Advisory Committee in the interpretation of R4 at Commentary C4-39 at page 53. (This should be taken into consideration with #'s 12 and 22 above.)

28) That reasonable inferences were refused to be drawn by the Courts such as the fact that the defendants all knew of the law suits and hostility of the Defendant Judge Mennetti and continued to bring matters before him both without reasonable notice or without any notice at all to the Petitioner as well as matters that were not even before the judge and the relief would always be granted and this would lead to the reasonable conclusion that there were either concerted action or the judge had decided to lend his authority to the defendants due to the Petitioners actions.

29) Despite repeated warnings to the Lower Courts of the activities of the defendants that the Petitioner would have to file for bankruptcy in order to try and save some semblance of solvency, the Courts refused to so act to prevent said injury, the Bankruptcy Petition was filed and the Court took everything away from the Petitioner including that portion of his property that was supposed to be exempt.

30) #29 was carried out and accomplished by fraud and perjured affidavits and the Court refused to address this activity.

31) The State Court Judge – Defendant – Mennetti was served the bankruptcy petition to stay a State Court proceeding and he ripped it up and threw it in the trash and told the Petitioner "I will see you at 1:30!"

32) Because the Petitioner was threatened with contempt by the Defendent Judge on Sept. 14, 1984 when he was without counsel and in light of the way the statement was made to the Petitioner in #31 above, the Petitioner feared for his safety and did not go to

the Hearing that afternoon. (3/12/85)

33) The Bankruptcy Court refused to deal with the actions of the judge and ignored the issue all together.

34) The judge granted all relief that day to the private defendants, including a wage execution and monies which were known to be forclosed on by the judge, attorney fees that were known to be double billed and monies forclosed on by the Court of Appeals.

35) The above activities were typical of the type carried out by the defendants at all stages and reported to the Lower Courts repeatedly. **(See Tex. vs. Penzoil, 784 F.2D 1133, 1147 for #'s 29-34 above.)**

36) The Lower Courts have knowingly allowed every legal standard to be violated and ignored in this case and placed irreperable injury onto the Petitioner which amounts to the type of futile appeals and due process violations held to be addressable and reversable by the Courts in **Texaco vs. Penzoil, 784 F.2D 1133,** and the Courts should reverse because of the futility of such efforts to appeal from the activities the Petitioner could not have properly addressed because of the continuing nature of the activities which would have prevented any reasonable Court from knowing in fact that it could conclude there is no set of facts or proof that could be proven to grant the relief requested.

Reasons for Granting the Writ

The Courts have so far departed from the usual course of judicial proceedings in dealing with PRO-SE matters that this Court should review the petition. The departures are based on the fundamental rights of Due Process of any hearing when a judge has been prejudiced, biased and totally unrelenting toward a PRO-SE individual to affect his right to a fair and impartial hearing and tribunal which would allow a reversal of any order on that ground alone. That the Lower Courts have also departed from the scheme of things by forcing the Petitioner to make a futile effort to appeal and maintain an ability to appeal due to the activities of the defendants and the Courts refusal to properly address these activities as provided by the **Texaco vs. Penzoil Case @1147.** The Lower Courts have also failed to abide by and address first time issues and arguments before their Courts and supported by this Courts decisions in **Stump vs. Sparkman**

1105 & 1106, Rankin vs. Howard, 633 F.2D 844, Cert. Den. 101 S.Ct. 2020, Dykes vs. Hoseman, 743 F.2D 1488, Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3075, Cert. Den. 53 Lw 3237, Applications of Gault, 875. Ct. 1428, Smith vs. Wade 51 Lw 4407, Butz vs. Enconomou, 98 S.Ct. 2894, 2910, Plamore vs. Sidoti, 52 Lw 3304, 716 F.2D, 1109, 1112, Boag vs. McDougal, 102 S.Ct. 700, Lugar vs. Edmondson Oil, 102 S.Ct. 2744, 2748, Texaco vs. Penzoil, 784 F.2D 1133, 336 F.2D 512 Cert. Den. 85 S.Ct. 649 and numerous other standards to great to list.

Arguments

1) ***Standard of a Lawyer vs. PRO-SE:*** The District Court has established that the PRO-SE Petitioner should be treated as a lawyer rather than a PRO-SE individual. A **R12-(B) (6)** dismissal requires not only that all statements be taken as true, but it must be certain beyond a doubt that no set of facts or theory could be presented to grant the relief requested – **Boag vs. McDougal, 102 S.Ct. 700, 336 F.2D 512, Cert. Den. 85 S.Ct. 643.** Even if the judge carried out the requirement of taking all facts as true, he did not nor could not have carried out the latter two parts of the criteria for this PRO-SE due to the extreme complexity of the cases and the failure to provide discovery to material which is in total control of the defendants. This failure would be consistant with the reversal of the case of **Zenith Radio vs. Matsushita Elec., 478 F. Supp. 7,494 F. Supp. 1161. (3rd Cir. 1980)** The Appeals Court has also left unaddressed the very question that this Court has left unanswered because it has never been called upon to so do regarding the connection between jurisdiction and failure to state a claim upon which relief may be granted. This question is extremely relevant here because the District Court Judge had indicated in his opinion that he either lacked subject matter and/or personal jurisdiction. Thus, since a **R12-(B) (6)** dismissal is one on the merits and a jurisdictional dismissal is not, the Court should review this issue to lay to rest when a dismissal is proper under either and how to distinguish when to use which method of dismissal.

Summary Judgement: The case law standard and rules of Court specifically state that when a judge relies on material outside the pleadings for a **R12-(B) (6)** dismissal it automatically

becomes one of summary judgement and advanced notice must be given and that if there is a material fact in dispute summary judgement may not be granted. The District Court Judge has done just that and the Court of Appeals has refused to apply the law as is required. The Third Circuit has defined at **92 F.R.D. @ 410** that *pleadings, affidavits and exhibits* are all separate items for review. the standard under **R12-(B) (6)** is that there can only be a reliance on the pleadings which is the complaint and answers prior to the closings of the record. Here the record was not only closed by the lapse of twenty days but was also closed by the default that was entered against all of the defendants, but one, and the state moved to re-open the record by requesting the default be set aside and they be permitted to file late answers which the judge so did and relied on the new material that was accepted outside the pleadings as per general **R12-(C).** The judge also relied on the Petitioners exhibits and did so prejudicially rather than favorably as he was required by law to do. It is clear, the law states that no material, no matter how it is presented to the Court, may be relied on to dismiss a case under **R12-(B) (6)** or it is summary judgement.

Failure to Provide Discovery: The case of **"Complex Litigation", 90 F.R.D. 207** states that normally one is not automatically entitled to discovery as a rule, however, in complex cases – due to the diversity of issue, number of defendants and requirements that pleadings be short – the complex case becomes the exception and not the rule. It further states that the need for discovery in complex cases is so that the issues may be resolved with clarity, all of the facts may be presented, all of the defendants may be uncovered and what facts relate to what defendants and what issues. It also was the exception due to the fact that there is always going to be material in control of the defendants which could be obtained in no other method. The Lower Courts have ignored this standard and permitted the dismissal of three complex cases without any discovery whatsoever and would also be in violation of the criteria for PRO-SE individuals which requires that it must be absolutely certain that no set of facts may be presented to grant the relief requested and for which this could not be carried out especially in light of the fact that there was an undisclosed savings account in the control of the defendant

Reardon that at least the defendants Segal, Page and Reardon prevented any disclosure of the account due to the possibility that it may have shown willfull fraud and/or that there were bribes payed to the Defendant Judges. The bribes could have been reasonably infered in accordance with the case of **State vs. Sherwin, 127 N.J. Super. 370, Pet. Diss. 95 S.Ct. 9.** However, with the extreme passage of time, even this avenue may now have been forclosed on to the Petitioner due to the dismissal of the cases and refusal to reverse and thus the irreparable harm that has now resulted. It is even further error to have dismissed without discovery in light of the fact that the Clerks Office, the Court and the Magistrates Office have failed to carry out their duties in accordance with the **"Complex Litigation"** case and then the systems error as well as the PRO-SE's errors were laid upon the PRO-SE party by dismissing the case and then refusing to grant him relief of any type even when all of the errors were not his nor created by him. Is the system free to do anything it wishes any time it wishes without any means of addressing its errors and the prejudice and injury it creates?

The above is even more curious in light of the fact that the District Court Judge stated three times on February 1, 1985 that discovery would take place, the Petitioner went to the pre-trial conference on February 22, 1985, none of the defendants showed up despite having had sixty days advanced notice and their excuse – which was accepted by the District Court and Court of Appeals – was they were not given sufficient notice. If this is not sufficient notice and is accepted by the Courts, how can two hours notice to a PRO-SE be sufficient notice to affect his interest in certain property rights? Also, what about sanctions for having failed to appear at the conference unless the defendants knew ahead of time not to show up or it would screw them and the judge up to have the case dismissed. But how could they have known that ahead of time? It would also be interesting to note that the rules of Court are specific in that if the record is closed, a defaulting party must seek leave to file a late answer and not simply file it with the Court blindly accepting it and then mooting all pending motions by the Petitioner. Where is the equity, justice and fairness in such an action by a judge. Doesn't the Federal Courts have to grant and uphold **"Due Process"** as well? Doesn't the violation of

"Due Process" by any Court permit the reversal of a Courts order through equity relief? Or does an individual have to file a Federal Tort Law Suit against a judge in order to obtain said equity relief?

Jurisdiction vs. R12-(B) (6): The Third Circuit Court of Appeals attempted to address the issue of when a case should be dismissed for lack of jurisdiction versus failing to state a claim upon which relief may be granted. **(Zenith vs. Matsushita)** It relied on this Courts decision and even noted that this Court had not thoroughly addressed this issue either. It now becomes apparent that this issue should be finally laid to rest by this court especially in light of the fact that the District Court Judge, throughout the repleat of his opinion, had continually infered that he either lacked subject matter and/or personal jurisdiction over the case and defendants. This is an extremely important issue here because the District Court Judge has ruled, in his Sua-sponte Motion to consolidate, that because the plaintiff had filed new law suits they were claimed to contain the same common law issues, because they stemmed from a divorce decree. The continued actions of the defendants regarding the loss of the Petitioners house, a wage execution, etc., would be thrown out by this judge for the same reason. Even though the case law standard says otherwise. But, this is precisely the problem, the Courts have refused to allow this PRO-SE Petitioner to have the laws applied to any matter he brings. While the federal issues may be the same, i.e., loss of property in violation of Due Process, the particular issue of the property right that is lost is different. What the Lower Courts have permitted to stand as a standard is that if some set of defendants are found innocent of having alleged to have deprived an individual of a right and interest in his house, that the individual is now foreclosed from suing the same defendants for having deprived him of the love and affection of his children, or having interfered with his religious freedom or having deprived him of other monies they knew were not reachable in court proceeding due to the fact they occured after the original final order was entered and foreclosed on by a rejection of an appeal to the Higher Courts in the state. This then makes the later continued activity to be totally separate from the original law suit. The Courts ruled in **Haefner vs. Co. of Lancaster, PA, Et**

Als, 543 F.2D 264 that Res Judicata only works if the issues are the same. What the District Court Judge has focused the issue to be is the divorce/custody decree and thus anything from it, even though the original order is final, is foreclosed on by Res Judicata and his ruling on the case.

Triable Issues: According to **Dykes vs. Hoseman, 743 F.2D 1488, 1499,** the issue of conspiracy is a triable issue and that the mere stating of conspiracy states a **Sec. 1983 Action. (ID. @1494)** What has taken place is that the District Court has used **R12-(B) (6)** to require the Petitioner to prove his claim before he may be permitted to maintain it. The failure of the judge to provide discovery to an undisclosed savings account and the reasonable inferences that the jury could have thus drawn could have corrected the problems the Court has complained of while it prevented the Petitioner from coming up with the proof it felt was necessary to maintain the action. Even aside from the proof, the Courts claimed was necessary, the standard of **Lugar vs. Edmondson Oil, 1025, Ct. 2744, 2748,** was clearly shown to the Court of Appeals and how the divorce/custody trial was rigged. And how each person, including the judge, participated in so doing and the Lower Courts ignored these facts and case law criteria, the proper parties to decide the question of whether there was a conspiracy or whether the judge(s) had lent their authority in any way or whether notice was proper – in accordance with the **Applications of Gault** – was the jury and not the judge by his Sua-sponte Motion to dismiss under **R12-(B) (6)** there is enough in the record with the applicable case law standards, to demonstrate the District Court Judge has set himself at odds with this PRO-SE and he has made it clear he will not come out on top in any matter he brings to him and this continues even to today.

2) **Loss of Jurisdiction by Case Law and Statute:** This Court held in **Stump vs. Sparkman @1105, 1106,** that if there were case law or statute which prohibited a judge from "considering" an order that the judge would lose immunity. Here the Petitioner pointed out that by way of **N.J. Statute 9:2-9 & 9:2-10 and by way of the case of E. T. vs. L. P., 185 N.J. Super. 77,** that the judge was prohibited from entering any order until said time that the moving party could prove the state had "jurisdiction" to act on their request. It was also pointed out that

in the case of **Pogue vs. Pogue, 147 N.J. Super. @64,** that unless the matter pertained to the welfare of the child, i.e. the child was in imminent danger, **"It was beyond the reach of the law".**

Coupling this with the criteria and the burden of proof required to be met by the defendant Mrs. Reardon by the above and the case of **Beck vs. Beck** the defendant could not meet such proof on her affidavit and a non-credible report from a psychologist. The Defendant Judge knew the report to be that of a non-credible expert as well as the fact of who the proofs were required to be born by and what they were and he granted the petition in spite of all of the criteria and knowledge and case law which he knew prevented him from so doing. Here it is not a question of whether custody matters are something he normally heres, as this was the wrong issue to be focused on. The issue was the November 9, 1983 order which preceeded the custody hearing and thus effected the Petitioners interest thereto by way of the improper and illegal order of November 9, 1983. Once a judge loses jurisdiction for a proper actions, he loses it on all future actions. **(Rankin vs. Howard)** the petition of November 9, 1983 was not a routine petition the Courts have a blanketed right over as noted by the fact the state enacted legislation to ensure this and the Courts upheld the restricted jurisdiction of the Lower Courts to so hear them. This is precisely what this Court has said and the **"Rankin"** Court interpreted. Once jurisdiction is lost, all normal judicial functions cease to be judicial and thus the actor acts on his own volition without the authority of the state. Thus the Courts have and continue to ignore the jurisdictional question but instead continue to focus on the functions themselves to protect the defendants for some unknown, for sure, reason.

Case Law Regarding Recussal: Again, with the **Stump** criteria in mind, does a judge become liable for his conduct when there is state case law which requires him to recuse himself from a case, it is pointed out to him and he refuses to remove himself. Here, the question is not whether the judge has the right to decide whether he must recuse himself, as the case law that was cited to the judge specifically stated that when a judge's credibility is verbally attacked – as the Petitioner did in the law suits – the judge has the obligation to remove himself. It further interpreted the

N.J. Rules of Court as saying the judge must so recuse himself even when the counsel or parties believes he may be prejudiced in some way. This then removes the judges clear, supposed, right to decide if he should recuse himself or not. According to federal case law standard, case omitted, a judges recusal removes his right to decide any issue in the matter that was previously before him. This then seems to me to be the very type of argument that this Court implied in the **Stump Case** regarding loss of immunity and loss of jurisdiction.

Admitted Lack of Jurisdiction: The next question that arises is whether, unknown to a plaintiff, a judge who states on the record that he does not have jurisdiction to hear and decide issues that are not properly before him would then be liable. This is the type of action which would seem to fall under the standard of a judge who acts in the face of a valid case law or statute which removes the judges jurisdiction. The question is thus, if a judge admits he does not have jurisdiction to here matters that are not properly before him, does a moving party have to know what the case law is or the statute is once the judge admits it on the record. This also is and must be taken into consideration with the fact that the admitting judge, then did continually allow a co-worker he was on a cordial relationship with to bring any matter she wanted to him at any time she wanted with or without notice or adequate notice and he would always grant the relief requested even when he knew it had already been foreclosed on for one reason or another. This same judge also allowed the defendant Mr. Klein, the Petitioners former State Counsel, to walk into court with no matter before the judge and allowed the lawyer to remove himself from the case. Thus, does a judge who knowlingly acts against his jurisdictional authority by his own admittance become liable under **42 U.S.C. 1983?**

Constitutional Loss of Jurisdiction: The Court of Appeals has left a constitutional first argument regarding the loss of immunity of judges based on the criteria of the **Stump @1105 & 1106** unaddressed. This argument deals with the loss of judicial immunity based on the existence of case law and the supreme law of the land, the U.S. Constitution under Articles VI and XIV, where it states . . . .

. . . .This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, "Shall be the Supreme Law of the Land; and the judges in every state shall be bound thereby." . . . .

Coupling this with the **Stump decision @1105 & 1106** where it states . . . .

. . . . In our view, it is more significant that there was no . . . statute and case law . . . prohibiting a Circuit Court, a Court of general jurisdiction, from "considering" a petition of the type presented to Judge Stump . . . .

Coupling this with **Butz vs. Economou, 98 S.Ct. 2894, 2910,** then we have a judge being bound by the Supreme Law of the Land which specifically prohibits a judge from granting relief to any litigant in violation of Due Process. The Supreme Law of the Land being Articles VI and XIV of the U.S. Constitution and for which the New Jersey Constitution binds the judge to the U.S. Constitution. Again, the standard set by this Court is clear to this Petitioner but is being left unresolved and unaddressed by the Lower Courts. Even the case re: **Rosenberg, 64 Va. L. R. 344** has relied on decisions by this Court and the English Courts which have implied that when a judge violates Due Process he lacks personal jurisdiction, and thus by way of **Rankin vs. Howard** he would seem to be liable for his actions. Thus it would seem that Due Process violations are not procedural errors but rather errors that go to violate the Supreme Law of the Land. Therefore, does this argument present a basis by which State Court Judges would lose jurisdiction and thus immunity for their actions when they knowingly or recklessly act to deprive a person of property, etc. in violation of Due Process?

3) ***Administrative vs. Judicial Functions:*** The Lower Courts have left unaddressed and unresolved the question of whether the assignment of a malicious judge and the refusal to remove said judge in contradiction to the Assignment Judges duties are judicial acts or administrative acts this Court held a

judge to be answerable for in accordance with **Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3079, Cert. Den. 53 Lw 3237.** The Petitioner relied on the N.J. Constitution to show that it was the Assignment Judges duty to remove such a judge when it is pointed out to him and he refused to fulfill his duties. The Petitioner also relied on rules of court and case law which would tend to indicate the appointment of a judge is an administrative function rather than a judicial function. Since this Court admitted in the **Stump Case** it has not had opportunity to determine what is a judicial rather than an administrative function and now the Lower Courts have passed on this issue as well. It is now left for this Court to lay to rest this issue once and for all.

4) **Does a judge lend his authority by aiding in the "rigging" of a case:** Here, while actions on the surface are subtle which would seem to be nothing at all, with an in depth analysis it will clearly show that the judge in fact assisted in rigging the Petitioners divorce/custody trial. This rigging took place by way of the fact that the State Court Judge knew all of the criteria in this particular case and that all proofs and burdens were on the defendant Mrs. Reardon. Aside from this is also the fact that the judge agreed we could have another judge hear the matter and when the Petitioner then had his attorney approach him on the matter, in light of the fact that the defendant Mrs. Reardon had worked with him in the past, he refused to transfer the matter back to the original residing judge. It should also be pointed out that the rules of court specifically state that once a case has been assigned to a judge that that judge is supposed to decide the disposition of the case.

The Petitioner would further point out that by the judges own admission he was totally familiar with the case of **Beck vs. Beck.** From that case comes the criteria the judge knowlingly and willfully acted on to violate. The case further points out the criteria of what a credible expert is and that he appointed and relied on two non-credible expert witnesses, his and Mrs. Reardon's, to decide the issue of custody. (i.e. the loss of the love and affection of the children and the destruction of a recognized family unit that had already been in existence for over 10 months.) This also comes in light of the fact that the judge also permitted the court appointed expert to violate his court order which affected

the fairness of the hearing. The judge also then permitted both Mrs. Reardon and the court expert to perjur themselves in court and even relied on said testimony. Therefore, in accordance with the **Lugar Decision @2748,** does a judge who manipulates the laws to aid a former co-worker lend his authority in such a way that the private party becomes liable under **42 U.S.C. 1983,** and does this also allow the reasonable inference there was concerted action on the part of the defendants. This is taken together with the fact that the attorneys knew these criteria as well and allowed not only these criteria to be violated but also explains why Mrs. Reardon did not call witnesses and why the Petitioners attorney refused to call witnesses despite threats to file ethics complaints if he did not. The attorneys knew that the judges job would be complicated and too obvious if he were to rely on the testimony of one side versus another. However, if it was only the experts and the Petitioner and Mrs. Reardon he could use the argument of demeanor to chose who he would believe and that is precisely what he did and was permitted to occur. It would seem to the Petitioner that when parties act in some way to manipulate the laws and criteria and they all perform some function that allows the manipulations to take place or act in some unobtrusive fashion to so manipulate, that a jury would have the right to reasonably infer, without direct evidence, that a conspiracy actually took place. **See State vs. Sherwin** thus if the above is correct, it would seem that the standard under **R12-(B) (6)** has not been met and the dismissal was improper.

Does a judge lend his authority when he admits he can not hear matters unless they are properly before him, and so denies the Petitioner, but allows the defendants to so do: Here the question goes to ask when a judge repeatedly admits he may not hear a matter unless it is properly before him, if he then can be considered to have lent his authority to the private party, one of which he has a cordial working relationship with, by permitting the private party to allow, knowingly, this standard to be continually violated. Doesn't this type of action, which sets up the hearings to deliberately be onesided, also effects the fundamental fairness of the hearings and tribunal itself. **(See Rosenberg @849)** Since the judge knew this to be improper and repeatedly admitted it, doesn't this rise to the level of lending ones

authority to the aid of a litigant and doesn't this also rise to the level of corrupt activity necessary to support concerted actions of the defendants? Again the courts seem reluctant to address these issues for some reason unknown to the Petitioner. Corruption takes many forms and under **R12-(B)-6** and as per **Stern vs. U.S. Gypsum,** not only could the technical deficiencies be corrected, but it seems quite clear what any reasonable jury would have concluded based on the evidence that was and could have been presented. Doesn't a District Court Judge error by being unable to ensure the **R12-(B) (6)** standard is met and doesn't an Appeals Court error when it fails to reverse such an error?

5) ***Statutes private litigants must enforce:*** According to the **Texaco Case,** which relied on the Lugar decision, if there is some unusual circumstances to make the private party the state actor and not the state itself, then the private party is reachable **under Sec. 1983.** Here the Petitioner pointed out that the particular order of November 9, 1983 was required to be enforced by the private litigant and the state could only become involved if it was proven the state had jurisdiction to so become involved. Does the Lower Courts then error by saying the private party is not an actor under color of law when the statutes placed the burdens on the private litigant. This seems to be the same type of futile effort that the Petitioner was placed into by the violations of the statutes and results there after as described in the **Texaco Case (@1145[7]).** Again, the Lower Courts have errored and are refusing to apply the law appropriately. The Courts have seemed to take a hostile attitude toward this case and it seems hopeful that they will get rid of this case due to this PRO-SE's lack of expertise and thus he will make the mistakes that this Court will find appropriate to deny the petition. This then will resolve this case it feels is problamatic. Again, the Courts refuse to apply the laws properly to this case.

Acting under Color of Law by acting with a private lititgant who is: Does a private party act under Color of Law when they act with a private litigant who is? The New Jersey Courts have ruled in the case of **State vs. Louf, 126 N. J. Super. 321, Aff. 64 N. J. 172,** that it is not necessary there be direct contact between all conspirators & in **State vs. Seaman, 114 N. J. Super. 19, Cert. Den. 92 S.Ct. 674,** that a conspiracy may be

proven by circumstantial evidence. Therefore, it would seem only logical that if there is a party who is acting under Color of Law, private or state, the party would in fact also so act. However, the Lower Courts have rejected this theory. Again, if this theory is correct, **The R12-(B) (6)** dismissal of the entire matter was improper.

6) ***Court Order on Individuals:*** Refering to the **Stump Decision @1105 & 1106,** the argument here is the same. If the state case law or statute can affect a judges jurisdiction, and an individual does not have the right to ignore, violate or willfully or recklessly disobey a court order, then does such a requirement affect an appointed official in the same fashion. If a court order is a legal document which can carry both criminal and civil sanctions for violating it, then it seems logical that the **Stump Decision** would be applicable to say that the violator would not be acting in accordance with the terms of his state appointment and would lose immunity from prosecution under **Sec. 1983.** While the court order makes him a state actor for **Sec. 1983,** he would be liable if he violates the provisions of that order and ultimately affects the constitutional rights of the individual as well as affect–Due Process. The Due Process violation going to affect the fairness and impartiality of the hearing by failing to evaluate and render a report on the children and then giving testimony as to his belief as to what and who is causing the children's problems. This is especially critical here since the failure to evaluate was admitted to create, by the experts own method of practice, a situation which yields totally erronious conclusions and opinions. Here not only has Due Process and a constitutional right been affected by the violation of the court order, but the Courts have rejected this hybrid of the **Stump Decision.** Case laws and statutes are legally binding orders on the people they can affect, so to is a court order. If it is not, then we may as well throw away the courts, the rules and the legislature because we will have reduced our system to one of men rather than that of laws for which we boast. **(See 51 Lw 5030)** Laws are made as a means of protecting society and to establish a form of behavior that we as a society can accept. This is why we place civil and criminal sanctions with them. If this standard is correct, even though the Lower Courts either rejected it or prevented it from being presented, the dismissal of the entire

case would be in error again due to the failure to ensure the safeguards built into **R12-(B) (6)** were met.

7) ***Sua-sponte Motion to Consolidate:*** Is it error for a judge to consolidate a set of complex cases into one when the case law standard would indicate they are in fact three separate cases with separate issues. In **Haefner vs. Co. of Lancaster, Pa. Et Als, 543 F.2D 264,** it was held that Res Judicata only works on cases where the issues are the same or could have been presented in the original complaint. The issue of the love and affection of the Petitioners children and the loss of child support and immediate attorney fees are not the same as sanctions by a judge, loss of his interest in his house, loss of or interference with religious freedom, a wage execution and fees to the defendant Mrs. Reardon especially since they occured long after the original law suit and could not therefore have been raised in that suit. This is also in light of the criteria in the **Texaco Case @1149[14])** where at least the 2nd criteria could not have been met since the Petitioner was deprived, by the defendants actions, from appealing the matter in the state. There is also the fact that since the original order was being challenged and was foreclosed on by the rejection of the appeal, then as far as the 3rd criteria **(ID @1149)** this could not be met either. Thus the Federal Court also errored regarding their right to issue an injunction and/or temporary restraining order. It would also be error on the part of the Lower Courts to have permitted this single judge to hear any matter since the injunctive request, which is one of the matters that was before the Court on February 1, 1985 was required by statute to be heard by a three judge panel. Again the Courts have departed or allowed a departure from the normal scheme of things. There is no question a judge has a general right to consolidate cases. However, the judge must always keep in mind the particulars of the case. He may not consolidate cases if prejudice may occur as a result. The Petitioner, even if the original case was deficient in allegations, had corrected those deficiencies in the second and third complaint including the possible deficiency regarding the loss of immunity and loss of jurisdiction by the Defendant Judges. Thus the Lower Courts either settled the dispute or permitted it to be settled through **R12-(B) (6)** which is not permissable when the allegations were sufficient. Thus the consolidation has created,

unless reversed, irreperable injury and prejudice to the Petitioner.

8) ***Purpose of Rule 12-(B) (6):*** The Rules of Court are quite clear regarding this type of dismissal. Here the Lower Courts have ignored the criteria that A) It must be certain that there is no set of fact that could be presented to grant the relief requested; B) That a PRO-SE's statements must be taken as true; C) That all parties must be given notice and opportunity to be heard from on a Sua-sponte Motion to dismiss; D) Opportunity must be given to correct any technical deficiencies the Court feels exists; and E) Discovery must be granted in complex cases to ensure no injustice or injury is mistakenly created.

A) With all of the above arguments and requirement of **R12,** it is not sufficient to say there has been no claim for relief as the safeguards of the rule prevent this. The Petitioner stated all necessary allegations, and with reasonable inferences by the Court, **R12** was not proper for dismissing the entire matter. The judge could dismiss certain individuals he felt allegations were deficient on, but in light of the **"Complex Litigation"** Case he should have waited till discovery was completed. What has taken place here is that the Courts have focussed in on the conduct of the judges and parties rather than the loss of jurisdiction – which moots otherwise normal judicial conduct – and then once it has chosen that alternative, it dealt with the related issues of the private parties to the suit.

B) Given the above, and the fact that all necessary allegations were made, including those for liability of a judge, the ruling to dismiss by ignoring the allegations has violated and permitted to be violated the standard that all statements must be taken as true. This includes the allegation of conspiracy. **(Dennis vs. Sparks, Dykes vs. Hoseman)**

C) According to the case at **716 F. 2D 1109, 1112, Cert. Den. 53 Lw 3240,** when a judge intends to make a Sua-sponte Motion to dismiss, which was argued to the Appeals Court, he must give notice to all parties of his intent to do so, since none of the private defendants were there, the Courts have violated, and permitted to be violated, this standard. It should also be pointed out the District Court Judge applied this standard in an earlier proceeding but then abandoned it on February 1, 1985. The

possible rationale for this criteria is it goes to the question of Due Process to ensure it is not violated.

D) In **Stern vs. Gypsum** The court held that technical deficiencies must be permitted to be corrected. Here the Court felt such deficiencies existed but never gave the Petitioner opportunity to correct them. This can be shown from the transcripts of the hearings and the requirements under **R12** itself. That is to say if the Lower Court had accepted any arguments on February 1, 1985 the dismissal would automatically become Summary Judgement and the cases could not have been dismissed. Thus there has not only been a violation of this standard but it has been permitted to stand.

E) The Petitioner does not believe he needs to go into this area again, as the case of **"Complex Litigation"** and its intent is quite clear as to what it spells out and requires in such cases. It is clear the case required discovery to proceed and the Lower Courts have refused to allow this criteria to be applied to this case and permited the prejudice and irreparable injury that has resulted to stand and lie uncorrected.

9) ***Prejudice:*** **28 U.S.C. 455** is quite clear in its intent. Congress wanted to ensure that even the appearance of the courts were maintained. Thus when a judge has demonstrated a prejudice or prejudicial action towards an individual or group of individuals the law requires the judge to recuse himself and it also requires that all orders by said judge be overturned and remanded. While the Statute was not cited to the Third Circuit, the arguments presented clearly fell into the type that required a reversal of the District Court Order. **See Poludniak @954, and U.S. vs. Mims and 484 F. Supp. 13, 15)** the type of conduct presented is as follows:

A) Changing of standards always to the disadvantage of the Petitioner.

B) Has knowingly permitted every legal standard to be violated by manipulating the laws to satisfy his beliefs.

C) Showing and harboring deceitful conduct.

D) Violated Due Process.

E) Put the errors and responsibilities for said errors on the Petitioner when in fact they were created by the Court Personnel.

F) Has treated another PRO-SE individual, Mr. Gancy, in a

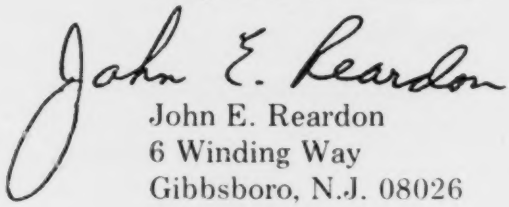
hostile manner. He thus bears an animus toward knowledgeable and/or aggressive PRO-SE individuals.
All of the above was pointed out to the Appeals Court and it too was ignored. The standard under the Statutes are quite clear and the consequences and effects on orders by such conduct is also quite clear.

If the above would require a recusal of a judge and would also require a reversal of all orders, then it must fairly be concluded that the Due Process rights of a fair and impartial tribunal and a fair and impartial hearing have also been violated, whether recusal is proper or not, and this would also require a reversal of the judges orders in the form of equity relief. This too was also ignored by the Lower Courts. Due Process is a right in every Court of Law and must be respected or the orders are subject to reversal.

CONCLUSIONS

With all of the above in mind, and the fact that all issues either directly or indirectly have a bearing or effect on **R12-(B) (6)** dismissals, then the Courts have so far departed from the normal course of proceedings that this Court is rquired to review the matter. By the Lower Courts having violated or permitted to be violated or ignored almost every legal standard and precept of law it has failed to carry out the duties they were created for. The only possible conclusions are that this case brings to the Courts almost every legal issue and question that has not been clearly answered by this or any Court of Law. It also brings to the Courts a case which challenges the virtual integrity of an entire Co. Court System and the integrity of the state as well. The possible fear is that it will be opening "Pandora's Box" if this case is permitted to go to trial. A box that could have repercussive effects on every Court in the country.

Respectfully submitted,



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In the Supreme Court
of the United States
October Term, 1985

John E. Reardon

Petitioner,

vs.

Virginia Reardon, Et Als

Respondants.

Appendix A

United States Court of Appeals
for the Third Circuit

No. 85-5179

John E. Reardon

v.

Virginia E. Reardon;
Vincent D. Segal, Esquire,
Segal & Tropp, and Robert W. Page
(D.C. Civil No. 84-3696)

John E. Reardon

v.

John E. Wallace and Robert W. Page, Judges;
Richard Klein, Esquire, and Morgan Melnick;
Klein & Cetti; Virginia E. Reardon;
Vincent Segal and Segal & Tropp;
I.V. DiMartino and Edward F. Mennetti, Judges;
Camden County Courts; and the Attorney General of the
State of New Jersey
(D.C. Civil No. 84-5203)

John E. Reardon

v.

Virginia E. Reardon; Vincent Segal, Esquire,
Segal & Tropp; Edward F. Mennetti; I.V. DiMartino;
Camden County Courts; Attorney General, and
the State of New Jersey
(D.C. Civil No. 85-0097)

John E. Reardon,
Appellant

Appeal from the United States District Court
for the District of New Jersey
District Judge: Honorable Stanley S. Brotman

Submitted Pursuant to Third Circuit Rule 12(6)
December 3, 1985

Before: Becker, Stapleton, Circuit Judges, and
Van Dusen, Senior Circuit Judge

JUDGMENT ORDER

After consideration of all contentions raised by appellant and for the reasons set forth in the opinion of Judge Brotman, it is adjudged and ordered that the judgement of the District Court be and is hereby affirmed.

Costs taxed against appellant.

By the Court

Circuit Judge

Attest:

Sally Mrvos,
Clerk

Dated: FEB 20 1986

In the Supreme Court
of the United States
October Term, 1985
No.

John E. Reardon

Petitioner,

vs.

Virginia Reardon, Et Als.

Respondents.

PROOF OF SERVICE

I, John E. Reardon, due certify that pursuant to Rule 28.4(A) of this court that a copy of this petition and all new and relevant material has been served on the respondents or their counsels by enclosing the appropriate material in an envelope and mailing it first class regular mail to the addresses of the respondents listed in the complaints submitted here as part of Appendix A, and that said material was deposited in the U.S. Mail at Gibbsboro, N.J. on June 24, 1986.

John E. Reardon

John E. Reardon, Petitioner

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

86-992

Supreme Court, U.S.
FILED
MAY 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court
of the United States
October Term, 1985
No.

John E. Reardon
8 Winding Way
Gibbsboro, N.J. 08026
(609) 783-6426

Petitioner,

vs.

Virginia Reardon; Vincent Segal, Esq.; Firm of Segal & Tropp; Richard Klein, Esq.; Firm of Melnick, Morgan, Klein & Cetti; Dr. Hopkins; Maffucci Realty; Ed Kelleher; Judge Page; Judge Mennetti; Judge DiMartino; Judge Wallace; N. J. Att. Gen. Mr. Kimmelman; Camden County Court System and the State of N.J.

Respondents,

Supplemental Appendix

Affiliation with Nat
Denman's Justice PRO-SE.
Membership date of 1/86.

25 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN E. REARDON,	:	Civil Action No. 84-3696
Plaintiff,	:	
v.	:	
VIRGINIA A. REARDON, VINCENT D. SEGAL, ESQUIRE and SEGAL & TROPP,	:	
Defendants.	:	

* * * * * *

JOHN E. REARDON,	:	Civil Action No. 84-5203
Plaintiff,	:	
v.	:	
	:	
JOHN E. WALLACE and ROBERT W. PAGE, JUDGES; RICHARD KLEIN, ESQ. and MELNIK, MORGAN, KLEIN & CETTEI; VIRGINIA E. REARDON; VINCENT SEGAL and SEGAL & TROPP; I.V. DiMARTINO and EDWARD F. MENNETI, Judges; CAMDEN COUNTY COURTS; and THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,	:	
Defendants.	:	

JOHN E. REARDON,	:	Civil Action No. 85-97
Plaintiff,	:	
v.	:	
	:	
VIRGINIA E. REARDON; VINCENT SEGAL, ESQ.; SEGAL & TROPP; EDWARD F. MENNETI; I.V. DiMARTINO; CAMDEN COUNTY COURTS; ATTORNEY GENERAL and THE STATE OF NEW JERSEY.	:	
Defendants.	:	OPINION

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Attorney for Richard C. Klein, Esquire and Melnick, Morgan, Klein & Cettei

BROTMAN, District Judge

Plaintiff John E. Reardon has filed in this court three related civil rights actions arising out of divorce and child custody litigation in which he is involved before the New Jersey Superior Court. In each instance, this court's jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343. Plaintiff, who is proceeding **pro se**, challenges as unconstitutional various acts by private citizens and state officials connected with his lawsuit in state court. In addition, plaintiff asks this court to adjudicate substantive issues of state law related to his divorce action.

Presently before the court are a series of motions brought by the plaintiff in order to expand the scope of two of his complaints. An initial review of the pleadings left the court with serious doubts as to the existence of jurisdiction to consider plaintiff's claims. In order to resolve this controversy in an expeditious manner, the court, on its own motion, asked the parties to consider several additional matters at oral argument: whether plaintiff's complaints should be consolidated; and whether plaintiff's claims should be dismissed for lack of subject matter jurisdiction or for failure to state a claim upon which relief may be granted. Before addressing the pending motions, the court will review the history and content of this litigation.

Background

Under the guise of the civil rights laws, 42 U.S.C. §§ 1983 and 1985, plaintiff seeks relief in the federal courts from a series of setbacks in matrimonial litigation in state court. Plaintiff's extensive pleadings challenge decisions of the New Jersey judiciary concerning custody of his children, his divorce from Virginia Reardon and disposition of his marital residence. According to plaintiff, he has been unsuccessful in state court because private persons and public officials have acted on their own and in concert to deprive him of federal rights.

The court will now proceed to a detailed examination of the three civil actions filed by plaintiff. The following facts are alleged by plaintiff and are uncontroverted by defendants, except as otherwise indicated.

1. *Civil Action 84-3696*

At some time during or before 1983, plaintiff and his wife, Virginia E. Reardon, became involved in divorce and custody proceedings. Docket No. M-04123—83. On or about May 31, 1983, Judge Judith A. Yaskin of the New Jersey Superior Court entered an order declaring plaintiff to be the custodial and residential parent for the Reardons' two minor children. See Complaint, Civ. No. 84-3696 at 3.

On November 8, 1983, plaintiff received word from his attorney, Richard C. Klein, Esquire, that counsel for his wife would appear in court the next day with an order to show cause. On November 9, 1983, Virginia Reardon presented such a petition in New Jersey Superior Court seeking to establish custody over the Reardon children. Mrs. Reardon alleged that denial of the relief requested would cause immediate, substantial and irreparable harm to her and her children. Judge Robert W. Page heard the matter and signed the proposed order. Complaint at 3-4. In November and December, 1983, Judge Page presided over several other matters related to the Reardons' case. During this period, plaintiff repeatedly requested Judge Page to recuse himself on the ground that the judge knows his wife, who works as a clerk in New Jersey Superior Court, Camden County. Each time, Judge Page refused to do so. Id. at 4.

On July 17, 1984, plaintiff filed suit in United States District Court[1]. The complaint named the following defendants: Virginia Reardon; Judge Page; Vincent Segal, Esquire, Mrs. Reardon's attorney; and the firm of Segal & Tropp, with whom Segal is a partner. Pursuant to 42 U.S.C. §§ 1983 and 1985, and the Fourteenth amendment to the United States Constitution, plaintiff alleges that the defendants conspired to deprive him of custody of his children without due process. Specifically, the complaint asserts that defendants failed to notify plaintiff of the proceedings on November 9, 1983, and prevented plaintiff from having a fair and impartial hearing on that day. Com-

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[1]/ Plaintiff originally asserted claims in the Eastern District of Pennsylvania. The parties agreed to transfer this action to the District of New Jersey.

plaint at 1-2, 3. Judge Page is alleged to have acted without jurisdiction and under the influence of his work relationship with Virginia Reardon. Id. at 2, 4-5. According to plaintiff, Judge Page's decision unfairly shifted the burden of proof regarding custody to plaintiff. Id. at 6.

Some time in October 1984, counsel for plaintiff and defendant Page approved a stipulation of dismissal with prejudice of all claims between the two parties. The stipulation was filed with this court on October 26, 1984 and on January 22, 1985, this court found plaintiff consented to the stipulation, and, accordingly, denied plaintiff's motion to reinstate his claims for injunctive relief against Judge Page[1]. The same opinion granted plaintiff's motion to discharge his attorney, William G. Blasdel, Jr., Esquire.

The court now faces several additional motions by plaintiff. First, plaintiff has moved to reinstate Judge Page as a defendant. Second, plaintiff seeks to amend the complaint to add the following new defendants: Richard C. Klein, Esquire ("Klein"), his attorney in state court; the law firm of Melnik, Morgan, Klein & Cettei ("Melnik, Morgan"), of which Mr. Klein is a partner; and William I. Hopkins, a licensed psychologist appointed by Judge Page to evaluate plaintiff, his wife and their children for purposes of certain divorce and custody proceedings. Third, plaintiff seeks to "preserve" his "rights to prosecute" the defendants pursuant to 18 U.S.C. § 241, the criminal analogue to 42 U.S.C. § 1985, should he prevail on his civil claims.

In papers filed January 25, 1985, plaintiff asked the court to grant him further injunctive relief. The court denied plaintiff's request for temporary restraints and agreed to hear the issues raised by plaintiff on short notice on February 1, 1985. The primary relief sought by plaintiff is removal to federal court of all state court proceedings concerning his divorce. Plaintiff requests the court to interview his children as to their custody preferences and also demands that the court enjoin the New

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[1]/ The court denied plaintiff's motion for reconsideration on March 4, 1985.

Jersey courts from taking further action in this matter. Finally, plaintiff asks the court to award him temporary custody, pendente lite, and to enjoin his wife from interfering with such custody.

Plaintiff's motion to add new defendants and to reinstate Judge Page as a defendant is based on allegations as to events in November and December, 1983. Plaintiff asserts that he has further evidence of a conspiracy against him. According to plaintiff, his former attorney, Richard Klein, Esquire, acted contraary to his wishes and best interests by rejecting litigation tactics he favored. In particular, plaintiff complains that Klein refused to seek disqualification of Judge Page on grounds of conflict and interest and bias. Plaintiff also challenges the judge's reliance on the testimony of William Hopkins. According to plaintiff, Hopkins was also biased in favor of Mrs. Reardon; as a result, he reached unwarranted conclusions in his testimony and gave evidence on matters beyond his expertise.

2. ***Civil Action 84-5203***

Proceeding on his own, plaintiff filed a second complaint on December 13, 1984. Plaintiff named several defendants other than those cited in the initial complaint: Judge John E. Wallace, Judge Edward F. Menneti, and Judge I. V. DiMartino, all of the New Jersey Superior Court, Camden County; Richard Klein, Esquire; the firm of Melnick, Morgan; the "Camden County Courts"; and the Attorney General of the State of New Jersey. Plaintiff asserts claims against these defendants under 42 U.S.C. § 1983 and the equal protection and due process clauses of the Fourteen Amendment.

Plaintiff's second action concerns events alleged to have occurred in September and October, 1984. A major aspect of the complaint is plaintiff's assertion that defendants Klein and Page conspired to prevent him from exercising his right to appeal a final judgment to divorce signed by Judge Page on July 23, 1984. Under Rule 2:4-1(a) of the New Jersey Rules Governing Appellate Practice, an appeal was permissible within 45 days of the order. Therefore, an appeal was due September 6, 1984. On August 21, 1984, defendant Klein sent plaintiff a letter notifying him of the date of his judgment and of the 45-day

deadline for appeal. Plaintiff contends that Klein failed to file papers in support of an appeal after plaintiff informed Klein of his desire to appeal.

The remaining portions of plaintiff's second complaint concern events surrounding an order to show cause filed by Vincent Segal, Esquire, counsel for Mrs. Reardon, and which was heard on September 14, 1984 by Judge Menneti. According to plaintiff, it was improper for the judge to consider the motion as he has a "cordial working relationship" with plaintiff's ex-wife. Plaintiff challenges Judge DiMartino's decision, as Camden County assignment judge, to direct Judge Menneti to hear the case. Plaintiff also accuses Judge Menneti of showing bias against him by preventing him from presenting witnesses at the hearing and by refusing his request for a delay in the proceedings. Plaintiff asserts Judge DiMartino also revealed bias by appearing at a conference in Judge Menneti's chambers on the day of the hearing.

At the September 14, 1984 hearing, defendant Klein withdrew as plaintiff's counsel. Plaintiff challenges his right to do so without giving plaintiff adequate notice. Judges Menneti and Wallace are accused of violating plaintiff's rights by permitting Klein's improper withdrawal, in that, Judge Menneti approved the motion to withdraw at the hearing, and Judge Wallace signed an order on October 5, 1984 giving effect to the withdrawal.

Plaintiff joins the Camden County Court system as a defendant based on general allegations of its complicity in the acts described above. Plaintiff has failed to assert any particular misdeeds by individual court employees or certain offices within the system. On the other hand, plaintiff claims the Attorney General of New Jersey refused to respond to his complaints concerning improper conduct by several state judges. Finally, plaintiff claims defendant Klein allowed him to enter into an "illegal" mortgage agreement which "violates the truth in lending laws."

In his second complaint, plaintiff seeks the following relief: (1) an injunction pendente lite against further matrimonial proceedings in state court; (2) seizure of files and tapes associated with his state court case; (3) seizure of Klein's file

concerning his work for plaintiff; (4) an injunction barring collection of fees plaintiff owes Klein; and (5) "preservation" of plaintiff's "right" to prosecute the defendants under federal criminal law.

Plaintiff now moves to join two new defendants: Maffucci Realty, Inc. ("Maffucci"); and Edward Kelleher, a real estate agent for Maffucci. Both parties allegedly conspired with Judge Menneti, Segal, and Virginia Reardon to secure the release of a prospective buyer's deposit on the purchase price for the Reardons' home, without plaintiff's permission. According to plaintiff, such action was detrimental to his interest in the sale of his home and violated his rights to control the disposition of property he owns with his ex-wife. "Amendment to Complaint," January 1, 1985 at 1-2. In addition, plaintiff asks the court to preserve his rights to prosecute in connection with these new claims. Finally, plaintiff has brought a motion for final judgment by default against every defendant except Segal and his law firm, who had previously submitted an answer to the complaint. The court docket registered an entry of default against these defendants. At oral argument, the court vacated default against the state defendants for good cause shown.

3. ***Civil Action 85-97***

On January 14, 1985, plaintiff filed a third action based on 42 U.S.C. § 1983 and the federal constitution which alleges violations of his rights to due process and equal protection. The complaint is brought against plaintiff's ex-wife, Vincent Segal, Esquire, Segal's law firm, Judge Menneti and Judge DiMartino, the Camden County County Court system, the state Attorney General and the State of New Jersey. Plaintiff alleges that Judge Menneti and the other defendants violated his civil rights in connection with proceedings in Superior Court related to the disposition of the Reardons' house. According to plaintiff, Judge Menneti signed an order appointing an attorney to execute an agreement to sell the Reardons' house without plaintiff's consent and without obtaining an order finding plaintiff incompetent to decide whether to enter into such a contract. Once again, plaintiff also asks the court to enjoin further state proceedings arising out of plaintiff's divorce.

Plaintiff also asks for damages, "preservation" or rights to prosecute and an order reversing Judge Menneti's ruling appointing an attorney to dispose of plaintiff's house. The court has received answers denying these allegations from every defendant named in this third action except Virgninia Reardon, who has yet to submit responsive pleadings.

Analysis

1. ***Consolidation of Pending Matters***

It is plain from a review of plaintiff's voluminous pleadings that his three cases raise common issues of law and fact. To some extent, each complaint focuses on a different set of events. Nevertheless, all three lawsuits arise out of a single controversy being adjudicated in New Jersey Superior Court. Plaintiff has brought claims against nearly every private citizen and public official having some connection to those proceedings. Separate adjudication of plaintiff's various claims has already caused considerable confusion for the court and other parties to this action. Plaintiff's pleadings are duplicative and repetitive. Accordingly, the court determines, on its own motion, and in an exercise of its discretion under Fed. R. Civ. P. 42(b), that the three actions brought by plaintiff should be consolidated and heard together.

2. ***Sufficiency of the Pleadings***

Based on serious questions as to its power to adjudicate plaintiff's claims, the court asked the parties to consider whether the complaints should be dismissed for lack of subject matter jurisdiction or failure to state a cause of action. A trial court may consider the issue of subject matter jurisdiction at any time, on its own initiative. Judgment on the pleadings for failure to state a claim may also be granted sua sponte "provided the complaint affords a sufficient basis for the court's action." **Bryson v. Brands Insulations, Inc.**, 621 F.2d 556, 559 (3rd Cir. 1980). In the court's opinion, there is no doubt that plaintiff's voluminous pleadings present adequate grounds for review pursuant to Fed. R. Civ. P. 12(b)(6).

In evaluating the sufficiency of the pleadings, the court has made every effort to discern a valid basis for plaintiff's alleged

federal claims. The court is well aware of the rule permitting dismissal of a complaint for failure to state a claim only when it appears that plaintiff can prove no set of facts sufficient to support his claims for relief. **Conley v. Gibson,** 355 U.S. 41, 44-45 (1958); **Bryson v. Brands Insulations, Inc., supra** Accordingly, the court has viewed plaintiff's allegations in the light most favorable to him, and has drawn all reasonable inferences in his favor. **Bryson, supra; Mortensen v. First Federal Savings and Loan Association,** 549 F.2d 884, 891 (3rd Cir. 1977). The court has considered plaintiff's three complaints, various exhibits attached thereto, and several amendments to the complaints previously submitted by plaintiff. In order to further accommodate plaintiff, the court will grant his motions to amend in so far as they concern new claims of harm for which the defendants are allegedly responsible.

A. ***"Rights" to Prosecute***

Plaintiff's motions and pleadings seeking to "preserve" the opportunity to initiate criminal prosecutions against all defendants are plainly out of order. Private plaintiffs have no right to have courts consider criminal charges against others, whether or not plaintiffs prevail against certain defendants on related civil claims. Moreover, "the federal courts have customarily refused to order the prosecution of particular individuals at the instance of private persons." **Rosquist v. Jarrat Construction Corp.,** 570 F. Supp. 1206, 1211 (D.N.J. 1983). Accordingly, the court will deny plaintiff's motions to amend to the extent that they seek to preserve rights to prosecute. Plaintiff's claims to this effect will likewise be dismissed.

B. ***Equal Protection***

Plaintiff has failed to allege any substantial basis for the equal protection claims raised in his second and third complaints. In pleadings filed January 23, 1985, in connection with his first complaint, plaintiff alleges that Judges Page and Menneti discriminated against him based on his gender and because his wife is a Superior Court employee. Nowhere in his submissions does plaintiff provide specific contentions to support these claims. Plaintiff's conclusory allegations are

insufficient as a matter of law. At very least, plaintiff is required to state some facts indicating unequal treatment connected with his status as a male or as the husband of a court employee. Plaintiff presents nothing to suggest defendants discriminated against him based on his gender or any other "invidious" or "irrational" classification. Consequently, plaintiff is unable to state a claim under the equal protection clause of the Fourteenth Amendment pursuant to 42 U.S.C. §§ 1983 and 1985. **See, e.g., Hagans v. Levine,** 415 U.S. 528, 541 (1973)(42 U.S.C. § 1983); **Griffin v. Breckenridge,** 403 U.S. 88, 102 (1971)(42 U.S.C. § 1985).

C. ***Claims Based on 42 U.S.C. § 1985***

In his first complaint, plaintiff alleges a conspiracy to deprive him of federally protected rights, a claim cognizable under 42 U.S.C. § 1985(3). Plaintiff's claims are founded on contentions that defendants sought to prevent him from appealing his divorce, from maintaining custody of his children and from participating in the disposition of his marital property, all in violation of the due process clause of the Fourteenth Amendment.

Section 1985(3) does not afford a right of action based on an alleged denial of due process rights. **Duff v. Sherlock,** 432 F. Supp. 423, 430 (E.D. Pa. 1977); **Oaks v. City of Fairhope,** 515 F. Supp. 1004, 1045 (S.D. Ala. 1981). Rather, the statute requires at least colorable contentions that a conspiracy involving state action involves "class-based animus." **See Petrone v. City of Reading,** 541 F. Supp. 735, 741 (E.D. Pa. 1982), and numerous other cases cited therein. As plaintiff has been unable to produce any facts suggesting intentional discrimination against him based on unlawful acts of classification, plaintiff's claims under 42 U.S.C. § 1985(3) must be dismissed for failure to state a claim upon which relief may be granted.

D. ***Judicial Immunity***

(i) Judges Page, Menneti, DiMartino and Wallace

Plaintiff's claims for damages against various members of the judiciary are barred by well-established doctrines of judicial immunity. Each of the judges named in the three

complaints are absolutely immune from liability for damages under the Supreme Court's decision in **Stump v. Sparkman,** 435 U.S. 349 (1978). Nothing in the lengthy pleadings submitted by plaintiff suggests that Judges Page, Menneti, DiMartino, or Wallace acted at any time with "clear absence of jurisdiction." 435 U.S. at 356-57. Judges Page and Wallace routinely hear divorce and child custody matters; Judge Menneti was assigned to do so by Judge DiMartino. As assignment judge for Camden County, Judge DiMartino has broad discretion to assign proceedings in Superior Court to any available judge. Nor has plaintiff made any specific factual contentions suggesting that the behavior of these men was improper in any way. Plaintiff has also failed to offer any indication that the alleged conduct of the four judges involved anything other than "judicial acts": that is, acts "normally performed only by judges" in the ordinary course of official duties. 435 U.S. at 360-61.[3]

Consequently, the court must dismiss plaintiff's claims for damages against defendants Judge Menneti, Judge DiMartino and Judge Wallace, as well as those against defendant Judge Page. This ruling renders moot the reinstatement of Judge Page as a defendant with respect to claims in Civil Action 84—3696 in so far as plaintiff seeks to impose monetary liability against Judge Page.

(ii) **William Hopkins, Court-appointed Expert**

The doctrine of judicial immunity applies to William Hopkins, the court-appointed psychologist whom plaintiff alleges gave perjured testimony and conspired with Judge Page to advance the claims of his wife. Plaintiff has failed to provide any substantiation whatsoever that Hopkins committed perjury or conspired with Judge Page to harm plaintiff's legal

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[3]/ Even if the judges' decisions resulted from a corrupt conspiracy, as plaintiff alleges (the court believes they did not), **see infra,** the judges are still absolutely immune from damages liability under 42 U.S.C. § 1983 for judicial acts within their jurisdiction. Dennis v. Sparks, 449 U.S. 24, 27 (1980). On the other hand, judicial immunity is not a bar to prospective injunctive relief against judicial officers acting in their official capacity. Pulliam v. Allen, _____ U.S. _____, 104 S. Ct. 1970 (1984).

position with respect to custody of his children. At very most, plaintiff's allegations support the conclusion that Hopkins' work was somewhat weak and that Judge Page exhibited less than exemplary judgment in selecting him. Such circumstances, even if true, do not give rise to liability under 42 U.S.C. § 1983. On the contrary, the acts of such persons "in the performance of an integral part of the judicial process" are protected by an absolute immunity, **Burkes v. Callion,** 433 F.2d 318 (9th Cir. 1970), **cert. denied,** 403 U.S. 908 (1971), as are those acts of persons performing under the direction of the judiciary. **Lockhart v. Hoenstine,** 411 F.2d 455, 460 (3rd Cir.), **cert. denied,** 396 U.S. 941 (1969). Accordingly there is no basis for plaintiff's claims for damages against Hopkins.

(iii) ***Camden County Court System***

Plaintiff's claims for damages against the Camden County Court system are as vague as they are untenable. To the extent that plaintiff asserts the institution is liable for the acts of court personnel simply because it is their employer, plaintiff relies on the doctrine of respondeat superior. Such a theory of liability is impermissible under 42 U.S.C. § 1983. **Hampton v. Holmesburg Prison Officials,** 546 F.2d 1077, 1082 (3rd Cir. 1976). Plaintiff is also barred from attibuting monetary liability to clerical staff acting in accordance with orders of the court, **Lockhart v. Hoenstine, supra,** 411 F.2d at 460, or of prosecutors, **Ross v. Meagan,** 638 F.2d 646, 648 (3rd Cir. 1981).

E. ***Prosecutorial Immunity***

The Attorney General of the State of New Jersey is immune from monetary liability under 42 U.S.C. § 1983 for all actions "intimately associated with the judicial phase of the criminal process," as well as "duties...in his role of advocate for the State" including activities preliminary to the initiation of litigation. **Imbler v. Pachtman,** 424 U.S. 409, 430 (1976). Such absolute immunity bars plaintiff's claims against the state Attorney General for failure to initiate actions against the state judges responsible for plaintiff's case. Even if plaintiff's claims are read to concern the Attorney General's administrative or investigative functions, he is likewise protected by a qualified immuni-

ty, as plaintiff has produced no allegation of malicious or even reckless behavior by the Attorney General. **See Imbler, supra,** 424 U.S. at 430-31[4].

Plaintiff's remaining claims are of three kinds. First, he seeks damages from seven private defendants who are not protected by doctrines of immunity. Plaintiff also asks for injunctive relief against the defendants named in his complaints to the extent that they are still involved in or have records related to a conspiracy to deprive him of due process rights. Finally, plaintiff demands removal of the issues in his state court litigation to federal court.

F. ***Claims Against the State of New Jersey***

Although plaintiff has named the State of New Jersey as a defendant in Civil Action 85-97, his complaint contains no specific claims whatsoever against this defendant; nor are any such allegations set forth elsewhere in plaintiff's pleadings. Accordingly, plaintiff's complaint against the State of New Jersey is dismissed for lack of subject matter jurisdiction. **Hagans v. Levine,** 415 U.S. 528, 538 (1974).

G. ***Removal***

Plaintiff wishes to remove his state matrimonial action to this court pursuant to 28 U.S.C. § 1441(c). Plaintiff requests preliminary injunctive relief to restore the status quo which prevailed prior to the events which first led plaintiff to sue in federal court. In addition, plaintiff asks the court to review prior orders of the state courts in his case. It is plaintiff's contention that this court should entertain his New Jersey family law claims, including an appeal of his final judgment of divorce, in conjunction with his federal civil rights claims. Plaintiff asserts that his state claims are directly connected to his federal causes of action. While it is true that plaintiff's federal and state claim both arise out of state family law proceedings, only his federal complaints address his alleged

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[4]/ Plaintiff is not barred from seeking injunctive relief against the state Attorney General. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736-37 (1980).

failure to obtain fair treatment in divorce, custody and property distribution proceedings in New Jersey Superior Court. Section 1441(c) states that

> Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or in its discretion, may remand all matters not otherwise within its original jurisdiction.

This statute is plainly inapplicable to the case at bar, which concerns separate actions in state and federal court. Plaintiff did not initiate removable claims in state court; rather, he filed suit on all his federal claims in federal district court. At this point, plaintiff seeks removal only of state law issues over which this court has no independent basis for asserting jurisdiction.

This court is extremely reluctant to involve itself in disputes which are ordinarily the exclusive province of the state courts. Unnecessary infringement on the jurisdiction of the courts of New Jersey would be contrary to the basic tenets of his nation's federal system of government. In short, this court has no business adjudicating matters of state family law which are the subject of ongoing proceedings in state court. It is well settled that "domestic relations is a field peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." **Magaziner v. Montemuro,** 468 F.2d 782, 787 (3rd Cir. 1972). "Traditionally, it has been the policy of federal courts to avoid assumption of jurisdiction in this species of litigation." **Id. See also In re Burrus,** 136 U.S. 593-94 (1890).

For all the reasons stated above, and because of significant doubts as to the validity of plaintiff's claims, plaintiff's motion for removal and preliminary injunctive relief is denied. The court will now address plaintiff's remaining substantive claims.

H. ***Conspiracy***

Under **Dennis v. Sparks,** 449 U.S. 24 (1980), an unsuccessful litigant in state court may bring charges of civil conspiracy, pursuant to 42 U.S.C. § 1983, against private citizens alleged to have acted in concert with state officials, including members of

the judiciary, with the purpose of depriving the plaintiff of due process rights under the Fourteenth Amendment. Although judges and prosecutors are protected from monetary liability, their absolute immunity does not extend to private co-conspirators. **Id.** at 428. As the court has previously noted, judges and prosecutors are not immune in such circumstances from claims for prospective injunctive relief.

In **Dennis,** the Court applied the rule that private actors "jointly engaged with state officials are acting 'under color' of law for purposes of § 1983." 449 U.S. at 28-29, citing, **inter alia, Adickes v. S.H. Kress & Co.,** 398 U.S. 144, 152 (1966). The Court qualified its ruling, however, by noting that "[o]f course, merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge." **Id.** at 29. Accordingly, the court will now consider the strength of plaintiff's allegation of conspiracy. The court must also determine whether plaintiff's contentions are sufficient to support an exercise of federal jurisdiction. That is, the court will examine the pleadings for allegations of joint activity between the state officials and the private defendants tending to show that the latter group acted under color of state law for purposes of 42 U.S.C. § 1983.

For the court to proceed with plaintiff's conspiracy claims, the pleadings must give rise to an inference that the private and public defendants "directed themselves toward...unconstitutional action by virtue of a mutual understanding or agreement." **Rosquist v. Jarrat Construction Corp.,** 570 F. Supp. 1206, 1211 (D.N.J. 1983); **Chicarelli v. Plymouth Garden Apartments,** 551 F. Supp. 532, 539 (1982). Vague and conclusory allegations as to the existence of a conspiracy are insufficient to sustain a cause of action under 42 U.S.C. § 1983. Plaintiff must allege specific facts to support his claims that the defendants acted jointly and with the purpose of violating his constitutional rights. **Hauptman v. Wilentz,** 570 F. Supp. 351, 375 (D.N.J. 1983); **Chicarelli, supra.** Such standards are in keeping with the policy in this Circuit which requires civil rights complaints to identify alleged misconduct with reasonable specificity so as to protect defendants from the vexation and expense involved in the defense of frivolous claims. **Rotolo v.**

Borough of Charleroi, 532 F.2d 920, 922-23 (3rd Cir. 1976). **See also Ross v. Meagan,** 638 F.2d 646, 649-50 (3rd Cir. 1981).

(i) **Civil Action 84-3696**

Several of the claims asserted by plaintiff against private defendants in his first complaint are not cognizable under 42 U.S.C. § 1983 as plaintiff fails to produce any evidence that the alleged acts were committed "under color of" state law. The pleadings show no connection between any acts of Judge Page and the alleged denial of notice to plaintiff regarding the November 9, 1983 hearing, or the refusal of counsel to adopt litigation tactics favored by plaintiff. Papers submitted by plaintiff indicate the parties asked Judge Page to hear the order to show cause only on the day of the hearing, and because Judge Yaskin was unavailable to decide the motion. "Complaint Amendment," December 28, 1984 at 2. Plaintiff arrived at the courthouse in time for the hearing after receiving notice from his attorney the day before. **Id.,** at 1-2. At best, plaintiff has stated valid criticism of attorneys Klein and Segal for failing to give him notice further in advance of the order to show cause. In any case, counsel did not commit this breach of etiquette under color of law.

Plaintiff has failed to allege anything to suggest that Klein acted jointly with Judge Page in deciding not to press the judge to recuse himself. Nor is there any evidence of Judge Page exercising any pressure on Klein so as to discourage him from filing an ethical complaint against the judge. "Complaint Amendment" at 3-4. Furthermore, nothing in plaintiff's allegations gives any indication of conspiratorial conduct with respect to Klein's decision to continue to participate in later proceedings before Judge Page on plaintiff's behalf. If anything, plaintiff's allegations assert claims against Klein which are cognizable under state tort law; they are plainly insufficient to sustain federal jurisdiction.

Plaintiff's remaining claims regarding the custody proceedings before Judge Page are deficient in that they include no basis for an inference that the private defendants reached a "mutual understanding or agreement" with Judge Page to deprive plaintiff of his civil rights. Viewed in the light most

favorable to the plaintiff, the pleadings contain only three items arguably relevant to plaintiff's claims of deprivation of due process by state officials in concert with the private defendants.

First and foremost, plaintiff contends that his wife "did work with" Judge Page "in the course of her employment with the Camden County Courts." Complaint, Civil Action 84-3696 at 4. According to plaintiff, the relationship caused Judge Page to favor plaintiff's wife; plaintiff suggests that at least, the situation presented an appearance of impropriety under the ethical guidelines for the legal profession. Plaintiff's charge of bias is conclusory and unsupported by any concrete evidence of special treatment. For instance, plaintiff offers no proof of the extent of any prior contacts between Mrs. Reardon and Judge Page. In particular, there is no indication Virginia Reardon works directly with Judge Page. Consequently, there is no reason to presume the two had a close working relationship, which might give rise to an inference of bias. Plaintiff simply claims that Judge Page's "disregard for plaintiff's rights [indicates] his predisposition to rule in favor of defendant Virginia E. Reardon." Complaint at 4. Were the court to find such broad allegations sufficient to support a colorable claim for conspiracy, it would be virtually impossible for court employees to pursue legal action within the jurisdiction where they work.

Plaintiff's other charges in Civil Action 84-3696 are based on nothing more than Judge Page's rulings against the plaintiff. Plaintiff errs when he insists that Judge Page acted without jurisdiction simply by approving Virginia Reardon's position with respect to a November 9, 1983 order to show cause. A federal cause of action cannot be based on the bare claim that Judge Page found "evidence...of irreparable loss" to the moving party when none existed. Complaint at 4. Plaintiff also fails to state a claim for voilation of his civil rights when he asserts that Judge Page acted improperly in February, 1984 by hearing an order to show cause off the record in the presence of counsel for both plaintiff and his wife. "Complaint Amendment" at 4. No inference of corruption arises merely because a party to litigation is excluded from proceedings between counsel and a judge.

All of these charges amount to the claim that defendants

acted lawfully and in concert merely because some of them invoked the jurisdiction of the court and plaintiff was not on the "winning side." **See Dennis v. Sparks, supra,** 449 U.S. at 28-29. Plaintiff fails to allege any facts which support an inference that defendants acted in any way inconsistent with their professional roles, much less that they agreed to deprive plaintiff of his rights.

Finally, plaintiff alleges Judge Page relied on biased testimony of William I. Hopkins, a court-appointed expert. As set forth above, plaintiff does not produce any evidence that Judge Page or Hopkins acted wrongfully. Furthermore, plaintiff's pleadings contain no specific contentions indicating a "mutual understanding or agreement" to deprive plaintiff of his rights. It is also important to note that since the filing of plaintiff's federal complaints, Judge Page has agreed to recuse himself from further responsibility in plaintiff's case.

In light of the conclusions above, the complaint in Civil Action 84-3696, as amended twice by plaintiff, does not support a cause of action for conspiracy against the defendants, or a claim for injunctive relief against the state defendants, under 42 U.S.C. § 1983. Accordingly, plaintiff's remaining claims in this case are dismissed for lack of subject matter jurisdiction or failure to state a claim upon which relief may be granted. Plaintiff's motion for various forms of injunctive relief, filed January 25, 1985, is likewise dismissed. The cross-motion to dismiss for failure to effectuate service is therefore moot.

(ii) **Civil Action 84-5203**

In his second complaint, plaintiff asserts various claims over which the court lacks subject matter jurisdiction, as they involve purely private conduct. Plaintiff has offered no support for his claim that Judge Page or any other state official "acted behind the scenes" or in any way conspired to cause plaintiff to lose his rights to appeal his final judgment of divorce. The pleadings plainly indicate that plaintiff failed to file a timely appeal because of his own acts and those of his counsel, Richard Klein, Esquire. Both plaintiff and Klein knew of the deadline to file an appeal, but neither submitted papers prior

to the expiration of the deadline.

The pleadings also fail to support an inference of action under color of law with respect to two other claims by plaintiff: that plaintiff received inadequate notice of an order to show cause heard September 14, 1984; and that Richard Klein, Esquire involved plaintiff in an illegal mortgage agreement. Viewing the facts alleged by plaintiff in the light most favorable to his cause, the court finds nothing to indicate that these events consisted of anything other than private conduct by the attorneys who handled these matters and by their clients.

The court observed above that a review of the pleadings reveals no specific factual allegations of any acts by the state of defendants which are in any way improper. Plaintiff's claims that Judges DiMartino, Wallace and Menneti acted beyond the scope of their jurisdiction and discretion are frivolous. The same conclusion applies to plaintiff's claims against the state Attorney General and unnamed persons in the Camden County courts. Accordingly, plaintiff may not proceed with his claims for injunctive relief and conspiracy based on such assertions.

Once again, the prinicpal basis for plaintiff's conspiracy charges and his claims for injunctive relief is the existence of contacts between his wife and a New Jersey Superior Court judge, in this instance Judge Menneti. This position is as tenuous as his accusations against Judge Page in his initial complaint. Plaintiff merely asserts Judge Menneti and Virginia Reardon have a "cordial" work relationship and that judges are prone to show favoritism toward court employees. Plaintiff cites the transcript of a September 14, 1984 hearing before Judge Menneti to show his bias.[5]. Instead, the transcript

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[5]/ Judge Menneti: Didn't I enter an order with you and your wife when I was in Matrimonial court?

John Reardon: Not that I know.

Judge Menneti: You wanted an increase and I denied it. You were paid $80 a week?

John Reardon: That's what I'm paying.

Judge Menetti: She came in for an increase.

John Reardon: You got me.

Footnotes cont. on next page

indicates that the judge has been willing in the past to rule on plaintiff's case in an even-handed fashion regardless of his contacts with Virginia Reardon. Even viewed in the light most favorable to plaintiff, the pleadings are insufficient to support an inference that plaintiff is capable of proving a conspiracy between the defendants, or even individual bias on the part of Judge Menneti.

The court is also unable to discern any evidence of a "mutual understanding or agreement" to deprive plaintiff of any rights in connection with Klein's decision to withdraw as plaintiff's counsel. The transcript of the September 14, 1984 hearing shows that Judge Menneti first heard of Klein's wish to withdraw at the hearing. Nothing elsewhere in the pleadings suggests otherwise. The transcript also demonstrates that the judge approved the request after plaintiff expressed his consent. Transcript at 15-18.

Finally, the court finds plaintiff's pleadings insufficient to state a claim under 42 U.S.C. § 1983, based on allegations that Judge Menneti conspired with Maffucci Realty, Edward Kelleher and others to release a deposit submitted to the court by a potential buyer of the Reardons' home, without plaintiff's permission. The proposed amendment to the complaint contains nothing to suggest Judge Menneti acted beyond the discretion he exercises in matrimonial matters. If anything, the record indicates that Judge Menneti has been acting to protect plaintiff's interests in the value of his home[6]. The court finds plaintiff's allegations vague and conclusory. Plaintiff asserts no

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[5]/ Cont. from previous page

Judge Menetti: In fact, she got angry with me because I didn't allow it. If I remember, she wouldn't talk to me for a few weeks.

Complaint, Civ. No. 84-5203, Exhibit XVIII, at 2.

[6]/ For instance, the transcript of the September 14, 1984 hearing shows Judge Menneti struggling to inform plaintiff as to procedures necessary to dispose of his property and to avoid foreclosure on the house. Without advice of counsel, and suspicious of the court, plaintiff resisted such measures designed to further his interests simultaneously with those of his ex-wife. Complaint, Civ. No. 84-5203, Exhibit XVIII at 8-27.

facts tending to suggest Judge Menneti acted contrary to law, or pursuant to a "mutual understanding or agreement" to harm plaintiff's interests.

In light of the findings discussed above, all claims raised in plaintiff's second complaint, and the amendments thereto, are dismissed for lack of subject matter jurisdiction or failure to state a claim upon which relief may be granted. In accordance with this ruling, plaintiff's motion for final judgment by default in this matter is denied.

(iii) **Civil Action 85-97**

Plaintiff's third complaint concerns Judge Menneti's recent decision to appoint an attorney to act on plaintiff's behalf with respect to the sale of the Reardons' house. The supporting papers filed by plaintiff do not substantiate his charges of a conspiracy between Judge Menneti, other state officials and private citizens to deprive plaintiff of property rights without due process. The court has examined the record and has evaluated the allegations therein in the light most favorable to plaintiff. On this basis, the court finds no specific factual contentions indicating unconstitutional acts by the public defendants themselves, or a "mutual understanding or agreement" between the public and private defendants aimed at infringing plaintiff's rights. As with plaintiff's other claims, the court finds that the pleadings only support the conclusions that plaintiff has been unable to prevail on positions he has taken in ongoing litigation in state court.

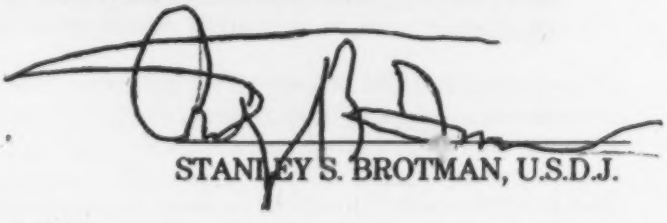
Even when the court draws all reasonable inferences in plaintiff's favor, it determines that plaintiff's conspiracy claims, and his contentions regarding injunctive relief against the public defendants individually, are meritless. Accordingly, these claims, and plaintiff's complaint in Civil Action 85-97 are dismissed.

Summary and Conclusion

Plaintiff has presented numerous claims to this court. Each of plaintiff's requests to supplement and amend his pleadings has been granted. The court has given thorough consideration to all of the material contentions raised by plaintiff, and treated with every claim arguably asserted therein. Plaintiff appears to have suffered considerable hardship and distress in the course of his proceedings in state court related to his divorce. It is always unfortunate when a party loses rights to appeal an adverse determination by the courts. However, plaintiff's grievances do not warrant proceeding in the federal courts.

This court concludes that dismissal of these claims is warranted. Plaintiff has presented the court with voluminous submissions which allege no substantial claims. Plaintiff has had ample opportunity to state the basis for his various claims. Plaintiff and the defendants also presented their views on dismissal of plaintiff's claims at oral argument. Accordingly, in the interests of judicial economy, the court, on its own motion, has addressed the inadequacy of plaintiff's claims as a matter of law and has reached the conclusions herein set forth.

In summary, plaintiff's motions to amend further his complaints in Civil Actions 84-3696 and 84-5203 are (1) granted, insofar as he seeks to supplement his factual allegations, and (2) denied to the extent he asks the court to recognize his right to influence the bringing of criminal proceedings against the defendants. The court consolidated plaintiff's three civil actions and dismissed each and every claim asserted in these cases. Accordingly, plaintiff's complaints are dismissed. Any other pending motions involving any of the within cases are deemed moot, in light of the court's determination herein. An order incorporating the foregoing will be entered.



STANLEY S. BROTMAN, U.S.D.J.

Dated: March 20, 1985